IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 910 OF 2005
WITH
NOTICE OF MOTION NO. 698 OF 2005

1. Om-Sai Darshan Cooperative Housing Society (Proposed), having its address at Manish General Stores, Parsiwada, Sahar Road, Andheri (East), Mumbai 400 099.

2. Chandrakant Ramchandra Thakur, Age: 50 years, Secretary of Om-Sai Dardhan Coop.Housing Society (Proposed) having address at Manish General Stores, Parsiwada, Sahar Road, Andheri (East), Mumbai 400 099. ... Petitioners.

Versus.

1. The State of Maharashtra, through the Secretary, SRA Section, Mantralaya, Mumbai 40001 represented through the Govt.Pleader, Original Side, High Court, Mumbai.

2. The Slum Rehabilitation Authority, through its Chief Executive Officer, having its office at 5th floor, Griha Nirman Bhavan, Bandra (E), Mumbai 400 051.

3. The Mumbai Housing & Area Development Board, through its Chief Executive Engineer, Chief Officer, having its office at Grih Nirman Bhavan, MHADA Bldg., Bandra (East), Mumbai 400 051.

4. The Secretary,
Hanuman Nagar Coop.Housing
Society (Prop.) Hanuman Nagar,
Parsiwadi, Sahar Road, Andheri
East, Mumbai 400 099.

5. Volga Constructions Pvt.Ltd.,
through Developer Mr.Hemant
Mule having office at Bhavani
Shankar Road, Dadar, Mumbai.

6. The Dy.Collector, SRA,
Girh Nirman Bhavan, Bandra,
Mumbai.

7. M/s.MCA Construction,
601-L, Con. Andheri Kurla
Road, Andheri Naka, Andheri
(East), Mumbai 400 59. ... Respondents.

Shri R.V.Govilkar with Shri M.B.Jadhav and Ms.L.N. Bedekar for the Petitioners.

Shri R.M.Sawant, A.G.P. for Respondents Nos.1, 3 & 6.

Shri G.D.Utangale for Respondent No.2.

Shri Sanjay Jain i/by Shri Piyush Shah for Respondent No.4.

Shri Jakhadi for Respondent No.5.

Shri A.A.Joshi with Shri T.S.Parwardhan for Respondent No.7.

CORAM : H.L.GOKHALE, &
ABHAY S. OKA, JJ.

Date on which hearing concluded : 1st February, 2006.

Date on which judgment pronounced: 26th April, 2006.

JUDGMENT (Per: Abhay S.Oka, J.)

1. Rule. Shri Sawant learned G.P. waives service for Respondents Nos.1, 3 and 6. Shri Utangale waives service for Respondent No.2, Shri Shah waives service

for Respondent No.4 and Shri Jakhadi waives for Respondent No.5. Shri Patwardhan waives service for Respondent No.7. Considering the facts and circumstances of the case and with the consent of the Counsel appearing for the parties, the petition is immediately taken up for final hearing. The contesting Respondents have already filed their replies. The Petitioners have filed their rejoinder also.

2. This petition under Article 226 of the Constitution of India interalia seeks to challenge the orders of eviction dated 4th March 2005 issued by the Respondent No.3 (Mumbai Housing and Area Development Board) against the members of the Petitioner No.1-proposed society under sections 33 and 38 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred to as "the Slum Act"). In the said notices, it is alleged that the members of the Petitioner No.1 to whom notices have been addressed have refused to shift to the alternative accommodation offered by the developer i.e. Respondent No.7. It is stated in the notices that if the concerned persons failed to show-cause, action of eviction will be taken under sections 33 and 38 of the Slum Act. The second prayer in this petition is for a writ of mandamus directing Respondents Nos.2, 3 (Slum Rehabilitation Authority) and Respondent No.6 (Deputy Collector, SRA) to hear the applications made by the

Petitioners for grant of Index-II for development of the property in favour of the Petitioner No.1-proposed society. The Petitioners have taken out a Notice of Motion for interim protection against demolition. An order of status-quo has been granted on 12th Decmber 2005 and the same has been continuing.

3. With a view to appreciate the submissions which are made before us, it will be necessary to refer to the facts of the case in brief. The case of the Petitioners is that the Petitioner No.1-proposed Cooperative Housing Society is promoted by the members who are occupying hutments on land bearing CTS No.539/C-1 situated at Chakala, Andheri (East), Mumbai. According to the case of the Petitioners, the members of Petitioner No.1-society were in possession of their respective structures numbering in all 28 as on 1st January 1995. According to the Petitioners, they submitted a proposal to the Respondent No.2 Slum Rehabilitation Authority (SRA) along with necessary documents for registration of the Petitioner No.1-society. According to the case of the Petitioners, the Surveyor of the Mumbai Municipal Corporation submitted a report stating therein that there was no separate access by a Municipal road to the property claimed by the Petitioners. In the meanwhile, The Respondent No.2 issued a letter of intent on 12th May 2003 in favour of Respondent No.4-society by which the proposal of Respondent No.4-society for

rehabilitation of slums on the very plot bearing CTS No.539-C-1 of village Chakala admeasuring 4361.56 sq.meters along with other adjoining area occupied in all by 702 hutment dwellers was accepted. The Respondent No.4 appointed the Respondent No.7 as a developer for the redevelopment project. According to the case of the Petitioners, the Petitioner No.1 and Respondent No.4 are totally different societies relating to separate city survey numbers. It is the case of the Petitioners that no objection and annexure II issued in favour of Respondent No.4 were cancelled on 22nd January 2004. It is the case of the Petitioners that the Respondent No.4-society is claiming rights in respect of the land bearing City Survey No.539/C. According to the Petitioners a direction was issued by the Minister for State of the Housing Department on 18th October 2003 to the Respondent No.2 directing Respondent No.2 to issue Annexure II in favour of Petitioner No.1-society. However, by communication dated 30th December 2004, Respondent No.2 informed the Petitioners that the Respondent No.4-society is having membership of 80% of the slum dwellers and the membership of the Petitioner No.1 extends to only 12% to 15%. It was stated that the Petitioner No.1 was having membership of only 28 members and therefore, separate Annexure II cannot be issued to the Petitioner No.1-society. By the said communication, the Petitioners were advised to cooperate with the Respondent No.4 for implementation of the redevelopment

scheme. It is stated in the petition that Annexure II granted to the Respondent No.4 was earlier cancelled on the ground that there was inaction on the part of the Respondent No.4. The impugned notices dated 4th March 2005 were issued to the members of the Petitioner No.1-proposed society on the ground that the said members have declined to cooperate and have not accepted the accommodation offered by the Respondent No.7-developer who is appointed by the Respondent No.4. Therefore, notice was given to take action of eviction under sections 33 and 38 of the Slum Act.

4. Shri Govilkar appearing for the Petitioners submitted that on 18th October 2003, a direction was issued by the concerned Minister to the Respondent No.2 to grant NOC and Annexure II in favour of the Petitioner No.1-society for rehabilitation of the 28 slum dwellers who were the members of the Petitioner-society. He pointed out that the NOC and the Annexure II was granted to the Respondent No.4 on 30th November 1996 and on account of long in-action on the part of the Respondent No.4, the said NOC and Annexure II was cancelled on 22nd January 2004. He submitted that thereafter instead of granting NOC and Annexure II to the Petitioner No.1, Respondent No.2 passed an order dated 30th December 2004 rejecting the prayer made by Petitioner No.1 for grant of NOC and Annexure II. He submitted that the said action of the Respondent No.2 was in violation of the

above directions issued by the State Government which were referable to its powers under section 3K of the Slum Act. Shri Govilkar invited our attention to the relevant provisions of the Slum Act, Regulation 33(10) of the Development Control Regulation for Greater Bombay, 1991 (hereinafter referred to as "DC Regulations") and various Circulars issued from time to time. Shri Govilkar submitted that the Respondent No.2 could not have issued the impugned notices to the members of the Petitioner No.1 and in fact ought to have granted NOC in favour of the Petitioner No.1. He submitted that the members of Petitioner No.1 cannot be forced to join Respondent No.4-society against their wishes. Relying upon a sketch annexed to the rejoinder affidavit filed by the Petitioners, he submitted that the Respondent No.4-society is formed essentially by the persons having structures in Hanuman Nagar area marked in red colour and the members of the Petitioner No.1 are independently existing on a distinct portion of the property marked by green colour on the said sketch. Shri Govilkar lastly submitted that unless there was a declaration issued under section 3C(1) of the Slum Act declaring a particular area to be a slum rehabilitation area, the letter of intent for implementation of slum redevelopment scheme could not have been issued. He placed reliance on the decision of a learned Single Judge of this Court reported in 2004(3) Bombay Cases Reporter page 14 (**Ramkali Sitaram Kushwaha & ors. v/s.**

Deputy Collector and others) in support of the said contention.

5. Shri Surana appearing for Respondent No.4 and Shri Joshi appearing for Respondent No.7 pointed out that though NOC and Annexure II were issued in the year 1996, letter of intent was issued recently on 12th May 2003 and NOC was issued on 21st October 2003 by the Respondent No.2. They pointed out that the permission was issued on 21st October 2003 to construct a transit camp. They also invited our attention to commencement certificate issued on 5th April 2004. It was submitted that as commencement certificate was issued as late as in the year 2004, the NOC granted to the Respondent No.4 could not have been cancelled on the ground of any in-action and therefore, the letter of cancellation dated 22nd January 2004 has been rightly withdrawn by Respondent No.3 by their subsequent communication dated 5th March 2004. It was further submitted by the Counsel appearing for the Respondents Nos.4 and 7 that the members of the Petitioner No.1 who are eligible as per Annexure II will be given transit accommodation and permanent accommodation in the property when redeveloped by Respondent No.4 and 7. Shri Utangale appearing for Respondent No.2 has made legal submissions on various provisions of the Slum Act and the D.C.Regulations. He has tendered written submissions. Shri Utangale placed reliance on the decision of a learned Single Judge of

this Court reported in 2000(3) Mah.L.J. page 147 (**Pooja Enterprises and another v/s. CEO, SRA MHADA, Mumbai**) as well as a decision of a Division Bench of this Court reported in 2002(1) Bombay Cases Reporter page 15 (**Relief Road Housing Societies Association and another v/s. State of Maharashtra**). Shri Utangale submitted that section 3c(1) of the Slum Act and the Slum Rehabilitation Scheme which forms part of the Regulation 33(10) of the D.C.Regulations operate in different fields. He submitted that there is no requirement of issuing Notification under section 3C(1) before sanctioning a slum rehabilitation scheme under section 33(10) of the D.C.Regulations. Shri Jadhav, A.G.P. appearing for the State supported the submissions made by Shri Utangale.

6. We have considered the submissions. As the Counsel appearing for the parties have extensively referred to the provisions of the Slum Act and D.C.Regulation 33(10), it will be necessary to advert to the said provisions.

7. Chapter IA of the Slum Act which deals with the Slum Rehabilitation Scheme was brought on the statute book by amending Slum Act by the Maharashtra Act No.4 of 1996. The amendment was brought into force with effect from 24th October 1995. Section 3A of the Slum Act provides for constitution of Slum Rehabilitation

Authority (for short SRA) for implementation of the slum rehabilitation scheme. Sub-section (1) thereof contemplates that the State Government may appoint SRA for such area or areas as may be specified in the notification published in the Government Gazette. The provision contemplates that different authorities may be appointed for different areas. The SRA is a body corporate having a perpetual succession with a common seal. Our attention has been invited to a notification published in the Official Gazette on 16th December 1995 appointing SRA for implementation of slum rehabilitation schemes for the area comprising of Greater Mumbai. The Chief Minister is the Chairman of the SRA. The Minister for the Department of Housing and Urban Development and the Minister of State for Housing (Slum Improvement) are members of the SRA. The Municipal Commissioner of the Mumbai Municipal Corporation, Principal Secretary of Revenue and Forest Department, Secretary of Housing and Special Assistance Department and the Secretary of Urban Development Department are the other members of the SRA. The notification further provides that the Secretary of the Housing and Special Assistance Department is authorised to hold the additional charge and function as the Chief Executive Officer of the SRA. The powers and duties of the SRA are listed in sub-section (3) of section 3A.

8. Section 3B(1) of the Slum Act empowers the State

Government or the SRA with the previous sanction of the State Government to prepare a General Rehabilitation Scheme for the area specified in sub-section (1) of section 3A for rehabilitation of slum and hutment colonies in such areas. The area referred to in sub-section (1) of section 3A is the one for which SRA is constituted by the State Government. Section 3B lays down the procedure for publication of draft General Slum Rehabilitation Scheme in Official Gazette and the procedure for submitting objections. The Chief Executive Officer of the concerned SRA is required to consider the objections and suggestions and to modify the draft scheme if necessary and publish the same with the prior approval of the State Government in the Official Gazette. Sub-section (4) of section 3B deals with the contents of slum rehabilitation scheme which reads thus:

> (4) The Slum Rehabilitation Scheme so notified under sub-section (3) shall, generally lay down the parameters for declaration of any area as the slum rehabilitation area and indicate the manner in which rehabilitation of the area declared as the slum rehabilitation area shall be carried out. In particular, it shall provide for all or any of the following matters, that is to say,-

(a) the parameters or guidelines for declaration of an area as the slum rehabilitation area;

(b) basic and essential parameters of development of slum rehabilitation area under the Slum Rehabilitation Scheme;

(c) provision for obligatory participation of the landholders and occupants of the area declared as the slum rehabilitation area under the Slum Rehabilitation Scheme in the implementation of the Scheme;

(d) provision relating to transit accommodation pending development of the slum rehabilitation area and allotment of tenements on development to the occupants of such area, free of cost.

(e) scheme for development of the slum rehabilitation areas under the Slum Rehabilitation Scheme by the landholders and occupants by themselves or through a developer and the terms and conditions of such development; and the option available to the Slum Rehabilitation Authority for taking up such development

in the event of non-participation of the landholders or occupants;

(f) provision regarding sanction of Floor Space Index and transfer of development rights; if any, to be made available to the developer for development of the slum rehabilitation area under the Slum Rehabilitation Scheme;

(g) provision regarding non-transferable nature of tenements for a certain period,

etc.

9. Section 3C confers power on the Chief Executive Officer to declare any area as slum rehabilitation area under the General Scheme which is already published under section 3B of the Slum Act. In the year 1998 a General Slum Rehabilitation Scheme as contemplated by section 3B of the Slum Act for Greater Bombay was published in the Governemnt Gazette. Sub-section (2) of section 3C provides for an appeal against such declaration made by the Chief Executive Officer. Section 3D provides that on publication of slum rehabilitation scheme under sub-section (1) of section 3B certain provisions of the Slum Act which are incorporated in the said section will apply to any area declared as a slum rehabilitation area. The Section

provides that Chapters II and III of the slum Act will not apply to such area.

10. Section 3K of the Slum Act deals with the power of the State Government to issue general or special directions to the SRA. Section 3K reads as under:

> "**3K. Power of State Government to issue directions.**- (1) The State Government may issue to the Slum Rehabilitation Authority such general or special directions as to policy as it may think necessary or expedient for carrying out the purposes of this Act and the Slum Rehabilitation Authority shall be bound to follow and act upon such directions.
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> . (2) (a) Without prejudice to the generality of the foregoing provision, if the State Government is of opinion that the execution of any resolution or order of the Authority is in contravention of, or in excess of, the powers conferred by or under this Act or any other law for the time being in force, or is likely to lead to abuse or misuse of or to cause waste of the Fund of the Authority, the State Government may, in the public interest, by order in writing, suspend the execution of such resolution or order. A copy

of such order shall be sent forthwith by the State Government to the Authority and its Chief Executive Officer.

. (b) On receipt of the order sent as aforesaid, the Authority shall be bound to follow and act upon such order."

Section 3R gives power to the State Government to enforce the performance of duties and obligations of SRA. The said section confers a power on the Government to supersede and reconstitute SRA in the event of default in performance of duty.

11. While dealing with the Slum Rehabilitation Scheme, it will be necessary to refer to the Development Control Regulations for Greater Mumbai 1991 which are part of the sanctioned Development Plan for Greater Mumbai under the provisions of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "the said Act of 1966). By notification dated 15th October 1997 D.C.Regulations were amended. By the said Amendment, Regulation 33(10) was introduced which reads thus:

"**33(10). Rehabilitation of s dwellers through owners/developers/ co-operative housing societies**:- For

redevelopment or restructuring of concerned slums or such slums whose structures and inhabitants whose names appear in the Legislative Assembly voters' list of 1985 by the owners/developers of the land on which such slums are located or by Cooperative Housing Societies of such slum dwellers a total floor space index of upto 2.5 may be granted in accordance with schemes to be approved by special permission of the Commissioner in each case. Each scheme shall provide inter-alia the size of tenements to be provided to the slum dwellers, the cost at which they re to be provided on the plot and additional tenements which the owner/developer can provide to accommodate/rehabilitate slum dwellers/project affected persons from other areas etc. in accordance with the guidelines laid down in the Regulations in Appendix IV."

12. **The Annexure to D.C. Regulation 33(10)** deals with the eligibility for redevelopment scheme and other aspects of the scheme. Appendix IV of the Development Control Regulations contains various Rules which will apply to the redevelopment of the slum as contemplated by Regulation 33(10). Regulation 33(10) provides that for redevelopment of slums including pavements, whose inhabitants' names and structures appear in the

electoral roll prepared with reference to 1st January 1995 or a date prior thereto, but where inhabitant stay at present in the structure, provision of Appendix IV shall apply on the basis of a tenement in exchange for an independently numbered structure. **Clause I** of the Annexure to Regulation 33(10) provides that only the actual occupant of the hutment shall be eligible and the socalled structure owner other than the actual occupant, if any, even if his name is shown in the voters list as on 1st January 1995 shall have no right to secure a tenement in the reconstructed building. Thus it is provided that for one independently numbered structure in a slum only one tenement will be provided in exchange in the reconstructed building/structure. That has also been the view taken by a Division Bench of this Court in an unreported judgment dated 8th February 2005 in Writ Petition No.3386 of 2004 in the case of **Balkrishna Sawant v/s. SRA and others** to which one of us (Gokhale, J.) was a party. The scheme provides that even if there are more than one occupants of one particular independently numbered structure, in the scheme under Regulation 33(10), the occupants will get only one tenement in exchange. **Clause II** of the annexure to Regulation 33(10) of D.C.Regulation is significant for deciding this matter which reads thus:

II. Definitions of Slum, Pavement, and structure of hut.-

(i) For this purpose, slums shall mean those censused or declared and notified, in the past or hereafter under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. Slum shall also mean areas/ pavement stretches hereafter notified as Slum Rehabilitation Areas or deemed to be and treated.

(ii) If any area fulfills the conditions laid down in section 4 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 to qualify as slum area and has been censused or declared and notified shall be deemed to be and treated as Slum Rehabilitation Area.

(iii) Slum rehabilitation area shall also mean any area declared as such by the Slum Rehabilitation Authority through preferably fulfilling conditions laid down in section 4 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 to

qualify as slum area and/or required for implementation of any slum rehabilitation project. Any area where a project under Slum Rehabilitation Scheme has been approved by CEO/SRA shall be deemed slum rehabilitation area.

(iv) Any area required or proposed for the purpose of construction of temporary or permanent transit camps and so approved by the Slum Rehabilitation Authority shall also be deemed to be and treated as Slum Rehabilitation Areas, and projects approved in such areas by the Slum Rehabilitation Authority shall be deemed to be Slum Rehabilitation Projects.

(v) A pavement shall mean any Municipal/ Government/Semi-Government pavement and shall include any viable stretch of the pavement as may be considered viable for the purpose of Slum Rehabilitation Scheme.

(vi) A structure shall mean all the dwelling areas of all persons who

were enumerated as living in that one numbered house in the electoral roll of the latest date upto 1st January 1995 and regardless of the number of persons or location of rooms or access.

(vii) A composite building shall mean a building comprising both rehab and freesale components or parts thereof in the same building.

(viii) Censused shall mean those slums located on lands belonging to Government, any undertaking of Government, or Brihan Mumbai Municipal Corporation and incorporated in the records of the land owning authority as having been censused in 1976, 1980 or 1985 or prior to 1st January 1995."

The annexure makes a salutary provision that reconstructed tenement shall be of ownership of the hutment dweller and his spouse conjointly and shall be so entered and be deemed to be entered in the records of the concerned cooperative housing society. Regulation 33(14) provides for FSI which is to be permitted for

construction of transit tenements. It also provides for FSI available for tenements of SRA and FSI which is to be utilised for free sale tenements which will be available to the developer for sale in open market.

13. Under Appendix IV to the D.C.Regulations and in particular under clause 1.1, the rights of the hutment dwellers who are found to be eligible in accordance with Regulation 33(10) and annexure thereto have been crystalised and it is provided that the hutment dwellers in a slum who are eligible in exchange of their structure will be given free of cost a residential tenement having a carpet area of 20.90 sq.meters (225 sq.ft.) including balcony, bath and water closet but excluding common areas. It is provided in clause 1.2 that even those structures having residential areas more than 20.90 sq.meters will be eligible only for 20.90 sq.meters of carpet area. The said provision lays down that if proposal contains a provision for more area, the same shall not be considered. Clause 1.5 of Appendix IV lays down that a certified extract of the relevant electoral roll shall be considered as adequate evidence to consider the eligibility if the hutment dweller is found residing in the structure. If hutment dwellers are found residing in the structure, but their names are on electoral roll as on 1st January 1995 at another slum/pavement site, they shall be considered eligible only at the place of the present residence.

14. The SRA has published **Guidelines for sanction of the slum rehabilitation schemes** under D.C.Regulation 33(10). **Annexure I thereof is a Format for submitting the scheme as per the Development Control Regulation 33(10).** The said Annexure I is required to be signed by the owner of Slum Redevelopment Area or by the Chief Promoter of a Cooperative Society formed by 70% or more of eligible slum dwellers as well as by the Architect of the Scheme. Part IV of the guidelines published by the SRA, Mumbai in December 1997 contains a **Procedure for submission, processing and approval of slum rehabilitation schemes**. It provides in clause 2 of Part IV that 70% or more of eligible hutment dwellers in a slum or pavement in a viable stretch at one place have to show their willingness to join slum rehabilitation scheme and come together to form a cooperative society of eligible hutment dwellers. Before submitting the proposal for approval, the Chief Promoter and members of the proposed society are required to collect necessary documents in respect of the property and to get the plot surveyed/measured by the surveyors attached to the office of the Additional Collector (Encroachment) or the Deputy Collector (Encroachment) of the particular zone. While undertaking the survey, the members of the society are placed under an obligation under clause 4 to collect the information of the proposed members/eligible slum dwellers and to fill up a self-prepared Annexure II in

the format prescribed by the SRA. The Annexure II contains several particulars such as name of the head of the family, details of the entry of the names in the electoral roll, nature of user, carpet area etc. The guidelines provide in clause 5 that the Chief Promoter and the office bearers of the proposed society after carrying out survey and preparation of annexure II should apply for name reservation of the proposed cooperative housing society along with self prepared Anneuxre II and other documents to the Assistant Registrar of Cooperative Societies. There is a separate Officer named as Assistant Registrar of Cooperative Societies (SRA). After the name reservation is obtained, a permission to open a bank account is granted in the name of the proposed society. The next step which is required to be taken under clause 6 is for appointing a competent developer to act as promoter of the Scheme. It must be stated here that the society itself or a NGO or the owner himself can take up the slum rehabilitation scheme as promoter. Clause 7 provides that after selection of the promoter, agreements are required to be entered into by this promoter with the eligible slum dweller. The promoter in consultation with the proposed society is required under clause 8 to appoint an Architect for preparation of plans of the development of the slum area as per Regulation 33(10). The application for slum rehabilitation scheme is thereater required to be

submitted duly signed by the owner/society/develper along with Annexure I, Annexure II and Annexure III to the SRA. Apart from the importance of Annexure II, Annexure III has a great deal of relevance. Annexure III is to be signed by the Architect and the Developer which is essentially meant for assessing the Financial capacity and capability of the developer to execute the slum rehabilitation scheme. Clause II thereafter provides for a pre-scrutiny by the designated Engineer of SRA only for ensuring that the proposal is complete in all respects. After scrutiny by the designated Engineer, a computerised file number is allotted to the scheme against payment of scrutiny fees. After the file number is given Annexures I, II and III are simultaneously scrutinized.

15. It must be stated here that so far as the grant of approval to Annexure II is concerned, the power vests in the competent authority and not in the SRA. In case of land vesting in the Mumbai Municipal Corporation, the said Corporation is the competent authority. Similarly in case of land vesting in MHADA, the competent authority is MHADA. In other cases, the competent authority is the Additional Collector (Encroachment) or the Deputy Collector (Encroachments). Under section 2(19) of the MRTP Act, 1966, the SRA is the planning authority for the purpose of grant of commencement certificate to building under SRA Scheme covered by

Regulation 33(10). After approval of Annexure II and approval of the scheme by the SRA, a letter of intent conveying approval to the scheme is issued under clause 12. Thereafter approval to the lay out, building wise plan, approval (intimation of approval) and Commencement certificate are issued by the SRA. The scheme further provides that all hutment dwellers who are found to be eligible as per annexure II must be provided transit accommodation and permanent accommodation notwithstanding the fact that they have not become members of the proposed cooperative society. However, if such hutment dwellers do not join the scheme within 15 days after approval has been given to the slum rehabilitation project, action under the provisions of sections 33 and 38 of the Slum Act can be initiated. After such action is initiated, the concerned hutment dwellers are not eligible for the transit accommodation along with others. For the rehabilitated tenement, they will not figure when the lots are drawn for allotment and they will be entitled to only to what is available after others have chosen. In case name of any hutment dweller is not included in the Annexure II, his remedy is to approach the Chief Executive Officer of the SRA who is empowered to decide the dispute. Whenever action is taken under section 33 of the Slum Act of issuing an eviction order against those hutment dwellers who are not cooperating, a remedy of appeal to the Administration of SRA is provided under section 35 of

the Slum Act.

16. The following questions arise for consideration in this petition:

(i) Whether the issuance of notification under section 3C(1) of the Slum Act is a condition precedent for sanction of slum redevelopment scheme governed by D.C.Regulation 33(10) ?

(ii) What is the meaning of the slum rehabilitation area for the purpose of D.C.Regulation 33(10) ?

(iii) Whether the Petitioner No.1-proposed society is entitled to grant of sanction to develop a particular area out of CTS 539/C-1 ?

17. So far as the first question is concerned, Shri Govilkar, the learned Counsel for the Petitioners has placed reliance on the decision of the learned Single Judge of this Court in the case of **Ramkali Sitaram Kushawaha & others v/s. Deputy Collector (ENC) and Competent Authority and others** (supra) The learned Single Judge amongst other questions framed following question (b) in paragraph 4. It reads thus:

(b) Whether declaration of general scheme of

rehabilitation under section 3-B and/or the Development Control Regulation No.33(10) issued under the Planning Act, exempts requirement of declaration under section 3C of the said Act ?

While dealing with the said question, the learned Single Judge held thus in paragraph 15:

".....It is, therefore, clear that mere declaration of a general scheme for rehabilitation of slum areas under section 3-B ipso facto would not amount to declaration of any specific area as the slum rehabilitation area, and for the same reason, slum rehabilitation scheme declared under section 3-B cannot be made applicable to an area in the absence of compliance of the provisions of section 3-C(1) of the said Act to such area. At the same time, mere publication of general scheme of rehabilitation would not bring any area within the scope of section 3-D. **For the purpose of applicability of section 3-D, it would be necessary for the concerned authority to declare the area to be slum rehabilitation area under section 3-C(1) of the said Act.** In the absence of compliance

of the provision under section 3-C(1), question of applicability of section 3-D does not arise. Undisputedly, the respondents have not issued any declaration under section 3-C in respect of the area in question, and the same has not been declared as the slum rehabilitation area under section 3-C of the said Act....."

(Emphasis supplied).

18. An earlier decision of another learned Single Judge of this Court in the case of **M/s.Pooja Enterprises v/s. The Chief Executive Officer & others** (supra) decided on 29th February 2000 was brought to our notice. In the said decision, the learned Single Judge held that the authorities under section 3B and 3C work in different fields. The learned Single Judge proceeded to hold in paragraph 8 as follows:

"As noticed earlier on the scheme being framed under 3-B, section 3-D would apply with the modifications. Under section 3-C it is competent authority and not the Slum Rehabilitation Authority which is entitled to declare any other area as a slum rehabilitation area. Therefore there are two different authorities acting in two different field. Under section 3-A

authority is created under the Act for the purpose of framing a scheme under section 3-B. Under section 3-C the competent authority after the said scheme has come into force under section 3-B is empowered to declare any other area as a slum rehabilitation area. **In my opinion therefore sections 3-B and 3-C operate in two different fields.** Once that be so, it is the Scheme as framed under section 3-B which would be applicable in so far as the petitioners are concerned as their area was already declared as a slum area by virtue of the deeming provisions. There can be no conflict between section 3-B and section 3-C as was sought to be contended on behalf of respondent No.4. Therefore, both by virtue of the Development Control Regulations and the Scheme as framed under section 3-B the petitioner were entitled to develop the area." (Emphasis supplied).

While we refer to the decision of the learned Single Judge in the case of M/s.Pooja Enterprises (supra), we find that the amendment made by Maharashtra Act VI of 1997 to section 3C(1) of the Slum Act was not brought to the notice of the learned Single Judge. Before the amendment, the power under section 3C(1) vested with the

competent authority. By the said amendment the power had been vested in the Chief Executive Officer, SRA. As the said amendment was not brought to the notice of the learned Single Judge, he proceeded on assumption that the power under section 3B is to be exercised by the SRA and power under section 3C is to be exercised by the competent authority. On a plain reading of section 3C, it is apparent that after publication of general scheme under section 3B, the Chief Executive Officer of the SRA on being satisfied that circumstances exist in respect of any area justifying its declaration as sum rehabilitation area may by an order published in the Government Gazette declare such area to be slum rehabilitation area. It must be noted here that section 3B(1) provides for preparation of general rehabilitation Scheme for the areas specified in sub-section (1) of section 3A. Sub-section (1) of section 3A provides that the State Government will constitute a Slum Rehabilitation Authority for such area or areas as may be specified in the notification. As pointed out earlier, the SRA was constituted for the area falling within Greater Mumbai. Thus the power under section 3C(1) is to declare any area as slum rehabilitation area under the Slum Rehabilitation Scheme published under section 3B.

19. In the present case we are dealing with the scheme of slum redevelopment which is governed by

Regulation 33(10). A General Scheme under section 3B of the Slum Act can be framed either by the State Government or by SRA with the prior approval of the State Government. However, the scheme under clause 33(10) is to be approved in individual cases by the SRA. Clause (II) of Annexure to the said Regulation provides that for the purpose of Regulation 33(10), a slum means that area which is either censused or one which is declared and notified under the Slum Act. It provides that the slum shall also mean areas pavement stretches hereafter notified as slum rehabilitation areas. The clause provides that if any area fulfills conditions laid down in section 4 of the Slum Act to qualify as a slum area and has been either censused or declared and notified as slum, it shall be deemed to be and treated as Slum Rehabilitation Areas. The said clause also provides that censused means those slums located on lands belonging to Government, any undertaking of Government, or to Brihan Mumbai Municipal Corporation and incorporated in the records of the land owning authority as having been censused in 1976, 1980, or 1985 or prior to 1st January 1995. Thus for the purpose of scheme under Regulation 33(10), the following areas are Slum Rehabilitation Areas; (a) any area which fulfills the conditions laid down in section 4 of the Slum Act which is declared and notified as such and (b) slum rehabilitation area declared as such by the Slum Rehabilitation Authority fulfilling the conditions laid

down in section 4 of the Slum Act to qualify as slum area and/or required for implementation of any slum rehabilitation project. Regulation 33(10) contemplates that there can be redevelopment of slums including pavements. The slums are defined by clause II. The slums mean either censused slums or slums declared and notified as such under the Slum Act. Clause II also defines the word censused which means slums located on lands belonging to Government, any undertaking of the Government or Mumbai Municipal Corporation and incorporated in records of the land owning authority as having been censused in 1976, 1980 or 1985 or prior to 1st January 1985.

20. On plain reading of the Annexure to Regulation 33(10) it is obvious that for sanction of a scheme governed by the said Regulation in respect of a parcel of land, it is not necessary to have a declaration of the particular parcel of land as a slum rehabilitation area in exercise of power under section 3C(1) of the Slum Act. The Slum Rehabilitation Scheme can be sanctioned in respect of a slum as defined in clause II of Annexure to Regulation 33(10). Under the said Annexure there can be a scheme for a viable stretch of pavement also. The learned Single Judge deciding Ramkali's case was not concerned with a scheme under D.C.Reguilation No.33(10). The proposition laid down by him will have to be read as one confined to the

situation before him. Question No.1 is therefore anwwered in the negative. The question No.2 has been also answered in the foregoing paragraphs.

21. For deciding question No.3, we will have to come back to the facts of the case. In the present case, the challenge in the petition is in substance to the sanction of Annexure II and the Scheme submitted by Hanuman Nagar Cooperative Housing Society (Proposed)(The Respondent No.4 herein). The SRA had issued NOC and Annexure II in favour of Hanuman Nagar Society on 30th November 1996. The learned Counsel for the Petitioners invited our attention to the communication issued by MHADA which is the competent authority for approval/sanction of Annexure II. By communication dated 22nd January 2004 MHADA informed the Architect appointed by the said Hanuman Nagar Society that Annexure II has been cancelled as no steps for implementation of the scheme have been taken by the said society. In the earlier part of this judgment, we have pointed out that the said letter of cancellation was subsequently withdrawn on 5th March 2004. The letter of withdrawal of 5th March 2004 issued by MHADA records that though Annexure II was sanctioned on 30th November 1996, the letter of intent was issued by the SRA in favour of Hanuman Nagar Society on 12th May 2003 and permission to construct transit accommodation was granted on 21st October 2003. As Hanuman Nagar Society

could not have taken any steps without the letter of intent issued by the SRA, we find that the action of MHADA of cancellation of Annexure II on the ground of delay was not proper and in our opinion the said decision was rightly rectified by MHADA.

22. Shri Govilkar appearing for the Petitioners relied upon the Minutes of the meeting held on 18th October 2003 in Chamber of the Minister of State of Housing. A copy of the Minutes is annexed to the petition which records that the office bearer of Petitioner No.1-society and the Resident Deputy Collector were present in the meeting. The minutes do not disclose that any representative of the Hanuman Nagar Society was present in the meeting or was given notice of the meeting. The Minutes record that the representative of the Petitioner No.1-Society pointed out that though Annexure II was issued in the name of Hanuman Nagar Society no progress had been made by the said society for a period of 8 years. The original Minutes which are in Marathi record that the Minister of State directed that the proposal submitted by the Petitioner No.1-society should be examined and decided immediately and Annexure II should be issued to the Petitioner No.1-society. Shri Govilkar submitted that this is a direction issued under section 3K of the Slum Act. Even assuming that it can be read as a direction under section 3K, it is obvious that the direction was

to the SRA to consider the proposal of the Petitioner No.1-society immediately. The said direction cannot be read as direction to grant approval to the proposal of the Petitioner No.1-society as neither under the Slum Act nor under Regulation 33(10), the Minister of State for Housing has a power to sanction either Annexure II or the Scheme. Apart from this, by no stretch of imagination, the direction which is recorded in the Minutes of the Meeting can be read as direction under section 3K issued by the State Government. The power under sub-section (1) of section 3K extends only to the issuing of general or special directions to the SRA as to policy as it may think necessary and expedient for carrying out the purposes of the Slum Act. Whatever is stated in the Minutes of Meeting cannot be read as a special or general direction as regards policy. The power under section 3K cannot extend to giving a direction that Annexure II of a particular proposed society should be sanctioned. When the purported direction was given, slum Rehabilitation Scheme of the Respondent No.4 was already approved by SRA. The Petitioner No.1 was claiming to develop a smaller area out of the area for which scheme of the Respondent No.4 was already sanctioned. Therefore, the Application of the Petitioner could not have been entertained either by SRA or by the State. Thus the direction cannot be read as one under sub-section (1) of section 3K by any stretch of imagination.

23. Sub-section (2) of section 3K provides that if the State Government is of the opinion that execution of any resolution or order of the authority is in contravention or in excess of powers conferred by the Slum Act or is likely to cause waste of the funds of the SRA, the State Government in public interest can suspend the execution of such resolution or order. In the present case, this power is obviously not exercised. As pointed out earlier, the meeting was held on 18th October 2003 and letter of intent in favour of Hanuman Nagar Society was issued by SRA on 12th May 2003, the sanction was issued by the SRA in favour of the said society on 21st October 2003, and on the same day permission was granted to construct transit camp. The Minister of State has not suspended the orders passed in favour of Hanuman Nagar Society by the SRA. When the letter of intent was already issued by SRA in favour of Hanuman Nagar Society on 12th May 2003, the Minister of State could not have directed the SRA to consider Annexure II prepared by the Petitioner No.1-society of only 28 eligible hutment dwellers as the area in respect of which the scheme was sought to be submitted by Petitioner No.1 was already covered by letter of intent issued in favour of Hanuman Nagar Society. In any event no such decision could have been taken by the Minister without following the elementary principles of natural justice by giving an opportunity of being heard to

Hanuman Nagar Society.

24. Reliance was placed by Shri Govilkar on a letter dated 5th August 2004 issued by the Additional Secretary of the State Government to the Chief Executive Officer of SRA stating that necessary action should be taken of approving Annexure II submitted by Petitioner No.1-society. The said communication is based on the direction given by the Minister of State in the meeting dated 18th October 2003. Therefore, the said letter is of no help to the Petitioners. The communication dated 30th December 2004 by SRA (Exhibit F to the petition) shows that in view of the direction issued by the Minister, the proposal of petitioner No.1-society was considered by the SRA. By the said communication the Chief Promoter of Petitioner No.1-society was informed that Annexure II submitted by Petitioner No.1 contained names of only 28 members. It is pointed out in the said letter that Hanuman Nagar Society has membership of more than 80% eligible slum dwellers and the membership of Petitioner No.1 is restricted only to 12 to 15 per cent. It was stated in the said letter that the members of Petitioner No.1 should cooperate with Hanuman Nagar Society failing which action will be taken against the concerned slum dwellers. By the said communication, the Petitioner No.1 was informed that the requisition for sanction of Annexure II made by Petitioner No.1-society stands rejected. After rejection of the said request,

some of the members of the Petitioner No.1-society were issued impugned notice on 4th March 2005 for taking action under sections 33 and 38 of the Slum Act.

25. When the scheme submitted by Hanuman Nagar Society was already sanctioned, the proposal submitted by the Petitioner No.1 could not have been entertained. It is not in dispute that the eligible members of the Petitioner No.1-proposed society will be entitled to accommodation in the reconstructed building in the scheme undertaken by Hanuman Nagar Cooperative Housing Society. In our view the Minister of State could not have entertained the application of Petitioner No.1 when the letter of intent was already issued in favour of Hanuman Nagar Society. So long as the approval granted to Hanuman Nagar Society was in force, the Minister could not have issued direction which he purportedly issued on 18th October 2003. As per the provisions of Annexure to Regulation 33(10) and Appendix IV, once a scheme submitted by a proposed society for slum rehabilitation is sanctioned, then the eligible slum dwellers who are not members of the society and who have not consented to the said society implementing the scheme are entitled to permanent accommodation in the redeveloped building. Once such a proposal is approved and is in force, the members who are in minority cannot purport to form a society and submit their own proposal. None of the eligible hutment dwellers have any right

save and except a right to get an accommodation of 225 sq.ft. in the event the scheme under Regulation 33(10) is implemented. Their right is confined to securing accommodation on the basis of a pre-existing eligible structure and they cannot insist that the development should be carried out by a society which is of their choice especially when a valid proposal of a proposed society which is supported by 70 per cent of the eligible hutment dwellers has already obtained approval to the slum rehabilitation scheme. In our view the Minister's direction has been appropriately dealt with by SRA in its communication dated 30th December 2004. Question No.3 framed earlier is therefore answered in the negative.

26. In view of the foregoing discussion, we find that there is no merit in the Writ Petition and the same is therefore rejected. The Notice of Motion will also stand dismissed. Interim order will stand vacated. There will be no order as to costs.

(H.L.Gokhale, J.)

(Abhay S.Oka, J.)